

REMARKS

This application pertains to novel oil-in-water cosmetic and dermatological preparations.

Claims 1 and 3-8 are pending.

Applicants note with appreciation that the rejection of Applicants' claims previously made under 35 U.S.C. 103(a) as unpatentable over Beerse et al. (6,294,186) has been withdrawn inasmuch as the Examiner recognizes that Beerse et al. merely discloses that the composition may compose ammonium acryloyldimethyltaurates/vinylpyrrolidone copolymer (Aristoflex AVC) in amount of 2% wt., but fails to teach or suggest to reduce the amount of Aristoflex AVC to the claimed amount of 0.2 to 0.3% of Aristoflex AVC.

Claims 1, 3 and 6 are now rejected under 35 U.S.C. 103(a) as obvious over Loffler (US 6,489,395). The Examiner sees the Examples of Loffler as disclosing 0.6-0.7 % wt. of Aristoflex AVC.

The rejection of the present claims over Loffler is no better than the previous rejection over the Beerse reference however, and should be withdrawn for the same reasons. Loffler merely lists Aristoflex AVC as an ingredient in some examples, but nowhere discloses what it is, what it does, or why it is present. The description is totally silent about acryloyldimethyltaurates/vinylpyrrolidone copolymer (Aristoflex AVC). In the face of this void, there is absolutely no teaching or suggestion to reduce the amount to 0.2-0.3%. For there to be such a suggestion, there would have to at least be some disclosure of the reasons *why* Aristoflex was included in the first

place, or of what it does. No one would be motivated to "select optimum parameters...to achieve a beneficial effect", as the Examiner contends, if they do not know what beneficial effect there is to be achieved, or what parameter is to be modified. No person reading Löffler would have any idea of what the Aristoflex AVC does in his compositions, and would certainly have no reason to vary his amounts. There is absolutely no suggestion to reduce Löffler's amounts to the specific levels claimed by Applicants. You cannot "optimize" something if you do not know what it is that you are optimizing!

The rejection of claims 1, 3 and 6 under 35 U.S.C. 103(a) as obvious over Löffler (US 6,489,395) should accordingly be withdrawn.

Claims 4-5 and 7-8 stand rejected under 35 U.S.C. 103(a) as obvious over Löffler (US 6,489,395) in view of what the Examiner refers to as "Applicants' admission regarding the prior art in the specification at page 14-19". It is respectfully submitted that any teaching regarding the inclusion of dyes, coloring pigments or cosmetic colorants that the Examiner may find anywhere, whether in the present specification or elsewhere, cannot possibly overcome the inherent deficiencies of the Löffler reference, as discussed above. The rejection of claims 4-5 and 7-8 under 35 U.S.C. 103(a) as obvious over Löffler (US 6,489,395) in view of what the Examiner refers to as "Applicants' admission regarding the prior art in the specification at page 14-19" should therefore be withdrawn.

The Examiner contends that Applicants' submission of an Information Disclosure under 37 CFR 1.97(c) prompted the new ground of rejection, and that this is the reason that the present rejection is made final. The Examiner refers to MPEP §

609(B)(2)(i) for authority to make this rejection final. However, MPEP § 609(B)(2)(i) specifically provides that such a rejection will not be made final. Accordingly, it is respectfully requested that the finality of the present office action be withdrawn.

In view of the present remarks it is believed that claims 1 and 3-8 are now in condition for allowance. Reconsideration of said claims by the Examiner is respectfully requested, and the allowance thereof is courteously solicited.

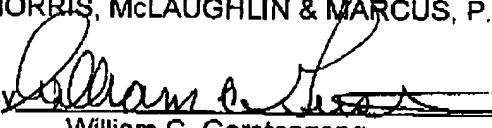
CONDITIONAL PETITION FOR EXTENSION OF TIME

If any extension of time for this response is required, Appellants request that this be considered a petition therefor. Please charge the required petition fee to Deposit Account No. 14-1263.

ADDITIONAL FEE

Please charge any insufficiency of fee or credit any excess to Deposit Account No. 14-1263.

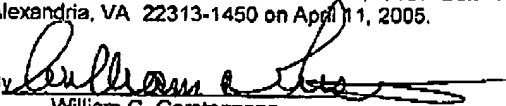
Respectfully submitted,  
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I hereby certify that this correspondence is being transmitted via facsimile, no. 703-872-9306 to the United States Patent and Trademark Office, addressed to: Mail Stop AF, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on April 11, 2005.

By   
William C. Gerstenzang  
Date April 11, 2005